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**IN THE  
COURT OF APPEALS OF INDIANA**

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WAI CHUNG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0708-CR-712
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Jeffrey Marchal, Commissioner  
Cause No. 49F08-0612-CM-222287

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**April 10, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Wai Chung appeals her conviction for prostitution as a class A misdemeanor.<sup>1</sup> Chung raises one issue, which we restate as whether the evidence is sufficient to sustain her conviction. We affirm.

The relevant facts follow. On October 24, 2006, Marion County Sheriff's Department Detective Jeffrey Clark called a telephone number in reference to an advertisement for a massage in a local newspaper. He spoke with a person he believed to be an Asian female, who gave him directions to an apartment. At the apartment, Chung informed Detective Clark that the "house fee" for a massage was seventy dollars and that he would have to pay it "up front." Transcript at 9. Detective Clark gave her the money, and she administered a body massage while he lay face down on a massage table. After about fifteen minutes, Chung told Detective Clark to turn over on his back and began massaging his "front side" for a few minutes. Id. at 10. Detective Clark asked if Chung took tips, and she "indicated with her finger up to her mouth to be quiet because there were other people in the apartment" but nodded and "indicated for fifty dollars with a hand signal" by holding up five fingers. Id. at 11. She then began fondling Detective Clark's genitals and asked whether he "liked it fast or slow." Id.

The State charged Chung with prostitution as a class A misdemeanor. At a bench trial, Chung testified that Detective Clark, though lying face down, was "constantly put[ting] his hands on [her], all over the place." Id. at 25. She told him "not to do that," and he turned over "on his own." Id. She denied having "promised to do anything else

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<sup>1</sup> Ind. Code § 35-45-4-2 (2004).

beside the regular massage” and also denied having asked for fifty more dollars. Id. The trial court, finding the testimony of Detective Clark more credible, found Chung guilty as charged. The court sentenced her to 365 days and suspended the sentence.

The issue is whether the evidence is sufficient to sustain Chung’s conviction. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh’g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

Ind. Code § 35-45-4-2 provides in pertinent part that “[a] person who knowingly or intentionally . . . fondles, or offers or agrees to fondle, the genitals of another person . . . for money or other property commits prostitution, a Class A misdemeanor.” Thus, to convict Chung of prostitution as a class A misdemeanor, the State needed to prove that Chung knowingly and intentionally agreed to fondle the genitals of Detective Clark for money. Chung argues that there is reasonable doubt whether an intelligible conversation, let alone an agreement, took place between her and Detective Clark.

An agreement is defined as “a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons.” Harwell v. State, 821 N.E.2d 381, 383 (Ind. Ct. App. 2004) (quoting BLACK’S LAW DICTIONARY 74 (8th ed. 2004)). An agreement need not be explicit to support a conviction of prostitution. See Williams

v. State, 254 Ind. 4, 6, 256 N.E.2d 913, 914 (1970) (“Surely it cannot be said that to constitute a violation of the [prostitution] statute . . . the offer must be express and in precise statutory language. The offer was implicit in appellant’s words and actions when taken in the context in which they occurred.”).

Here, while Chung was massaging Detective Clark, he asked her if she took tips. She put her finger to her mouth, indicating to the detective to keep quiet, but nodded and held up five fingers, which Detective Clark interpreted to mean “fifty dollars.” Transcript at 10. She then began fondling Detective Clark’s genitals and asked him whether he “liked it fast or slow.” Id. at 11. Based upon that evidence, the trial court could properly conclude that an agreement was implicit from the parties’ words and actions considered in the context in which they occurred. Given the facts of the case, we conclude that the State presented evidence of probative value from which a reasonable trier of fact could have found Chung guilty beyond a reasonable doubt of prostitution as a class A misdemeanor.<sup>2</sup> See, e.g., Harwell, 821 N.E.2d at 384 (holding that the evidence was sufficient to support defendant’s conviction for prostitution where an agreement to perform fellatio for money was “implicit in the parties’ words and actions when considered in the context in which they occurred”).

For the foregoing reasons, we affirm Chung’s conviction for prostitution as a class A misdemeanor.

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<sup>2</sup> Chung also argues that the evidence was insufficient to support her conviction because “[n]o other money was ever exchanged” beyond the seventy dollars for the massage. Appellant’s Brief at 8. However, the basis for a conviction for prostitution under Ind. Code § 35-45-4-2 is performance of, an offer to perform, or an agreement to perform, a sex act for money. The statute does not require an actual exchange of money to support a conviction for prostitution.

Affirmed.

BARNES, J. and VAIDIK, J. concur